

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

DALE P. LAFONT and ALECIA)
LAFONT,)

Plaintiffs,)

vs.)

Case No. 1:09CV10 HEA

STATE FARM FIRE AND)
CASUALTY COMPANY)

Defendant.)

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on Defendant's Motion to Order a Continuance of Plaintiffs' Motion for Partial Summary Judgment Under Federal Rule of Civil Procedure 56(f), [Doc. No. 18]. Plaintiff opposes the Motion. For the reasons set forth below, the Motion is granted.

Plaintiffs filed this action on January 29, 2009 seeking to recover under an insurance policy issued by Defendant for losses they incurred as a result of a fire to their home and personal property. Defendant filed its answer to the Complaint on March 9, 2009, however, prior to the filing of Defendant's Answer, Plaintiffs' filed a Motion for Partial Summary Judgment. This motion was primarily based on the fact that Defendant had acknowledged its agreement to pay and settle Plaintiffs' insurance claim and now refuses to pay the claim.

Defendant moves to continue the Motion for Partial Summary Judgment on the grounds that the subject fire is being investigated as an arson by the Bureau of Alcohol, Tobacco and Firearms. As such, Defendant is unable to sufficiently obtain facts relevant to the claim and particularly, to Plaintiffs' Motion for Partial Summary Judgment.

Federal Rule of Civil Procedure 56(f) states that a court may deny a motion for summary judgment, order a continuance to enable affidavits to be obtained, depositions to be taken or other discovery to be undertaken, or issue any other just order. The Party opposing the motion is required to show by affidavit that, for specified reasons, it cannot present material facts essential to justify its opposition. A summary judgment motion must be refused when the non-moving party has not had the opportunity to discover information that is essential to its opposition. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, Fn. 5 (1986). "To request discovery under Rule 56(f), a party must file an affidavit describing: (1) what facts are sought and how they are to be obtained; (2) how these facts are reasonably expected to raise a genuine issue of material fact; (3) what efforts the affiant has made to obtain them; and (4) why the affiant's efforts were unsuccessful." *Johnson v. U.S.*, 534 F.3d 958, 965 (8th Cir. 2008).

As set forth in the affidavit, the Bureau of Alcohol, Tobacco and Firearms is

conducting an investigation into the fire described in Plaintiffs' complaint. The ATF has indicated that it has an informant who possesses knowledge as to the circumstances surrounding the starting of the fire described in Plaintiffs' Complaint. Clearly, this information is not only relevant to the material issues before the Court, but essential to responding to the Motion for Partial Summary Judgment. Defendant informs the Court that the ATF and the United States Attorney's office does not wish to divulge the identity of their informant. A position the Court not only understands, but supports based on the ongoing criminal investigation. It would indeed result in an injustice to Defendant were the Court to require Defendant to respond to the Motion for Summary Judgment without complete information regarding the investigation and conclusions reached therefrom. Because the investigation has not been completed, material facts relevant to Plaintiffs' claims remain unknown. As such, Defendant cannot present facts essential to justify its opposition.

Denial of the Motion for Partial Summary Judgment at this juncture will not prejudice Plaintiffs. This case is in the initial stages; minimal, if any, discovery has taken place; the parties have just recently attended a Rule 16 conference. Particularly in light of these facts, the Motion for Partial Summary Judgment is premature.

Accordingly,

IT IS HEREBY ORDERED that Defendant's Motion, [Doc. 18], is granted.

IT IS FURTHER ORDERED that Plaintiff's Motion for Partial Summary Judgment, [Doc. No. 4], is denied, without prejudice to refile upon the completion of discovery.

Dated this 27th day of May, 2009.

A handwritten signature in cursive script, reading "Henry Edward Autrey", written in black ink. The signature is positioned above a horizontal line.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE